



Office of the Attorney General
State of Texas

January 10, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Dan Eden
Acting Executive Director
Texas Water Commission
1700 North Congress
Austin, Texas 78711-3087

OR92-10

Dear Mr. Eden:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your predecessor's request was assigned ID# 14071.

Your predecessor claims that a letter sent to the Texas Water Commission ("the commission") informing of questionable activities and decisions of a Municipal Utility District Board may be withheld from public disclosure under the informer's privilege aspect of section 3(a)(1) of the Open Records Act. We have considered your claim and reviewed the documents submitted to us. It is apparent from those documents that this request for information was originally advanced on July 31, 1991. Your office denied the request without referring the matter to this office in the manner prescribed by section 7(c) of the Open Records Act. Your predecessor did not seek a determination from this office under section 7(c) until October 24, 1991, following a second request for the letter. When a governmental body fails to request a determination from this office whether information may be withheld under exceptions to the Open Records Act within ten days of receiving a request for the information, the information is presumed to be open. *See Hancock v. State Bd. of Ins.*, 797 S.W. 2d 379 (Tex. App.--Austin 1990, no writ); art. 6252-17a, § 7(c). This presumption may be overcome only upon a compelling demonstration that the information should be withheld. *Hancock, supra*.

We do not find that your predecessor has made such a compelling demonstration here for the application of section 3(a)(1) as it incorporates the informer's privilege. Indeed, we have received information indicating that the

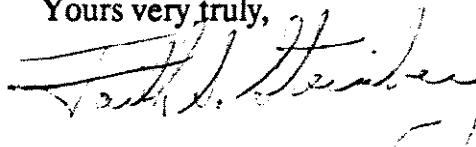
identity of the informant in this case is already known to the requestors of the information, a fact which in itself renders the informer's privilege aspect of section 3(a)(1) inapplicable. Open Records Decision No. 582 (1990). We therefore conclude that the letter requested in this case must be disclosed.

Your predecessor has also inquired whether "the Commission may properly invoke the informant's privilege exception...without uniformly requesting an Attorney General determination under Section 7(a) of the Open Records Act." Your predecessor would like to know if the commission may withhold information that it deems to be within the informer's privilege exception without submitting the matter to this office for a determination. As indicated by the foregoing discussion, such information must indeed be submitted to this office unless there has been a previous determination that the precise information involved is within the exception. See § 7(a), V.T.C.S. art. 6252-17(a). Open Records Decision Nos. 511 (1988); 435 (1986).

Finally, your predecessor asked whether you may withhold telephone memoranda relating to the letter in question. It is not apparent, however, that anyone has requested access to such memoranda. For this office to make a determination under section 7(a), there must have first been a request for the information. We must therefore decline to rule on the memoranda submitted. See V.T.C.S. art. 6252-17(a), § 7(a) ("If a governmental body *receives* a request for information...") (emphasis added). We also note that if this information is requested, you must offer specific arguments for exception from disclosure if you seek to withhold any part of it.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-10.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Faith S. Steinberg', written over a horizontal line.

Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FSS/mc

Ref.: ID# 14071

Enclosures: Open Records Decision Nos. 515, 511, 435

cc: Mr. David J. Stone
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